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DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF FLORIDA JACKSONVILLE DIVISION.

588-J-Civil.

WILLIAM J. SCOTT, RUBIN KNOX, AND W. M. YOUNG,

Plaintiffs.

versus

THE NORTH SHORE CORPORATION AND BAYSHORE WATER AND LIGHT COMPANY,

Defendants.

COMPLAINT.

Plaintiffs complaining of the defendants state:

1. That the defendants are each of them corporations.

2. That this suit is brought under the Fair Labor Standards Act of 1938 of the United States, Sections 6, 7 and 8, U. S. Code Title 29, Sections 206, 207 and 216.

3. That the defendant North Shore Corporation owns and operates the toll road connecting with U. S. Highway No. 17, Fort George Highway and the intercoastal highway crossed by said toll road at Sisters Creek. That the said toll road is the only means of land communication between Fort George Island and the remainder of the United

States. That said road is used extensively by traffic from points outside the State of Florida to points on said Toll Road and beyond as well as for traffic from points on said toll road and beyond to points outside the State of Florida and for the use of said toll road by all of said traffic a fee is charged by said defendant.

4. That on Fort George Island, Florida, there are located two large Clubs whose membership consists for the most part of people from States other than the State of Florida, who use said toll road in Interstate Commerce for hire. That there is a large winter colony on Fort George Island who came from States other than the State of Florida and who use the said toll road in interstate commerce and for hire.

5. That there are several fishing camps in the business of renting boats, cabins and serving meals, frequented by the public and used extensively by visitors from other States than the State of Florida and said places of business are accessible by land over said road as the exclusive means of ingress and egress.

6. That the United States mail and shipments of freight and other commodities from other States or shipped to other States are carried over the said toll road. That the Post Office Department of the United States uses said road for the carriage of mail from other States to the residents of Fort George Island and from Fort George Island to other States over the said toll road in interstate commerce.

7. That merchandise manufactured in States other than the State of Florida is carried over the said toll road in interstate commerce for delivery from such foreign State to the various places of business on Fort George Island, and at New Berlin and at Eastport and places beyond.

8. That the said toll road is used in interstate commerce in the handling and delivery of products manufactured in foreign States and shipped to residents along the route of the said toll road.

9. That the Bayshore Water and Light Company is a subsidiary of the North Shore Corporation and renders certain services in connection with the operation of the said toll road.

10. That the services of the employees of these two corporations are so interrelated and interchangeable that it is impossible to separate them for the purposes of this suit.

11. That the Bay Shore Light and Water Company owns and operates a telephone line connecting with the Southern Bell Telephone and Telegraph Co. over which long distance calls are placed and had to points from within the State of Florida to points outside the State of Florida and from points outside the State of Florida to residents and visitors along the route of the said telephone line which is so operated by the employees of the defendants as a service in interstate commerce.

12. That said telephone line is also used in the transmission of telegraph communications by the Western Union Telegraph Co. and Postal Telegraph Co. from points within the State of Florida to points outside the State of Florida and from points outside the State of Florida to points within the State of Florida for which services the defendants and each of them collect certain charges.

13. That the said toll road and telephone line are each and both used in interstate commerce.

14. That each of the plaintiffs in his employment by the defendants was engaged in interstate commerce by reason of the fact that each of them collected tolls for the defend-

ants from travelers on the said toll road who were hauling merchandise from points from outside the State of Florida to points inside the State of Florida and from points inside the State of Florida to points outside the State of Florida and from travelers along the said road who came from points outside the State of Florida to points in the State of Florida and from points inside the State of Florida to points outside the State of Florida and that each of them collected the tolls for the defendants in the operation of the telephone line on calls from outside the State of Florida to points inside the State of Florida and in the delivery of telegraph messages from outside the State of Florida which were telephoned over the said telephone line, to residents in the State of Florida and others to whom such messages were sent over said telephone system.

15. That the services of the said plaintiffs were essential to the carrying on of the business of the defendants as aforesaid and was rendered by the plaintiffs in interstate commerce.

16. That the plaintiff William J. Scott entered the employ of the defendants about the 14th day of October, 1942, and his employment ceased about the 26th day of March, 1943; that he was employed 13.5 hours per day 7 days per week and that there is due to him from the defendants for overtime hours worked the sum of $564.08 and for time worked during maximum hours the sum of $276.00, making a total of $840.08, of which sum the defendants have paid the said plaintiff Scott the sum of $460.00 and that there is due to the plaintiff Scott the sum of $380.08, together with liquidated damages in like amount and an attorney's fee as by the said Fair Labor Standards Act provided.

17. That the plaintiff Rubin Knox entered the employ of the defendants about the 15th day of March, 1942, and his employment ceased about the 15th day of March, 1943; that he was required by the defendants to work 12 hours per day 7 days per week. That for the work so rendered

by the plaintiff Knox the defendants owed the plaintiff Knox for normal wages and overtime the sum of $2589.60. That the defendants paid the plaintiff a part thereof, but the plaintiff Knox is unable to state the exact amount of such payment.

18. That the plaintiff W. M. Young also performed work for the defendants in interstate commerce wherein he was required by the defendants to work in excess of the maximum hours provided by the said Act and paid wages therefor less than the minimum provided by law, but the plaintiff Young alleges that he does not have a record of the time when he began to work for the defendants nor when he quit nor the amount of wages paid to him by the defendants.

19. The plaintiffs allege that the said wage and hour law under which this suit is brought provides that during the years after October, 1941, the maximum hours of work in interstate commerce shall be 40 hours and that the minimum wage is fixed at 30 cents per hour with time and one-half for overtime.

20. That the said defendants required these plaintiffs and each of them to work in excess of 40 hours per week during the time that the plaintiffs were employed by the defendants and were paid less than 30 cents per hour for the work so performed and the defendants did not pay the plaintiffs nor any one of them overtime as required by the law.

Wherefore the plaintiffs claim damages for the minimum wages so due, the overtime so due, the liquidated damages provided by law and an attorney's fee for their attorney.

JOHN E. LAKE,
Attorney for Plaintiffs.

JOHN E. LAKE,
Attorney for Plaintiffs,
105 Law Exchange Bldg.,
Jacksonville, Florida.

6 INTERROGATORIES PROPOUNDED TO DEFENDANTS.

District Court of the United States, Southern District of Florida, Jacksonville Division.

William J. Scott, Rubin Knox and W. M. Young, Plaintiffs,
vs.
The North Shore Corporation and Bay Shore Water and Light Co., Defendants.

1. On what date did William J. Scott enter the employ and when did he leave the employ of your company?

2. If the plaintiff William J. Scott did not work 7 days per week during the period of his employment when did he begin to work 6 days per week and when did he cease working 6 days per week.

3. On what date did Rubin Knox enter the employ of and when did he leave the employ of your company?

4. If the plaintiff Robin Knox did not work 7 days per week during the period of his employment when did he begin working 6 days per week and when did he cease working 6 days per week?

5. On what date did W. M. Young enter the employ and when did he leave the employ of your company?

6. When did the plaintiff W. M. Young begin working 7 days per week during the period of his employment and when did he begin working 6 days per week?

7. Give the rate per week of the wages of Rubin Knox and of Wm. M. Young and state when the rate of pay of each changed and in what respect it changed?

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7 ANSWER OF DEFENDANT THE NORTH SHORE CORPORATION.

District Court of the United States, in and for the Southern District of Florida, Jacksonville Division.

William J. Scott, Rubin Knox and W. M. Young,
Plaintiffs,
vs. No. 588-J-Civil.
The North Shore Corporation and Bayshore Water and Light Company, Defendants.

First Defense.

The complaint fails to state a claim against this defendant upon which relief can be granted.

Second Defense.

The said telephone line was operated by this defendant during the period between March 15, 1942, and April 1, 1942. As to the plaintiff, Rubin (or Ruben) Knox, who claims to have performed services in connection with the telephone line during said period, this defendant denies that he worked in connection therewith other than as an operator thereof engaged in making connections and putting calls through. Said telephone line has at no time had more than ten stations and this defendant was, insofar as said telephone line is concerned, during the said period, a public telephone company with a public telephone exchange which had less than five hundred stations.

Third Defense.

This defendant says that at none of the times mentioned in the complaint was there any substantial part of the activities of the plaintiffs or any of them relating to commerce from points inside the State of Florida to points beyond the boundaries thereof, or from points beyond the boundaries thereof to points inside the State of Florida.

Fourth Defense.

At none of the times mentioned in the complaint was there any substantial amount of interstate commerce conducted on or over said road or telephone line.

Fifth Defense.

This defendant admits the allegations of paragraphs 1, 2, 5 and 19. As to the other allegations of the complaint it says:

As to paragraph 3: It admits that it owns and operates a toll road commencing at U. S. Highway No. 17 about one-half mile north of Trout River in Duval County, Florida, and generally paralleling the north shore of the St. Johns River for a distance of seventeen miles down to Pilottown and the westerly short of Fort George Inlet, both in Duval County, Florida. Said toll road crosses the Intracoastal Waterway at Sister's Creek, where a drawbridge is located. Said toll road is the only means of land communication between Fort George Island and the remainder of the United States. Said road is not used extensively by traffic from points outside the State of Florida to points on the toll road and beyond, nor is it used extensively for traffic from points on the toll road and beyond to points outside the State of Florida, but, on the contrary, such use as there is of said toll road by parties engaging in interstate commerce

is insubstantial and inconsequential. Tolls are charged by this defendant to all persons using said road for whatever purpose, except for certain individuals who are granted courtesy passes over the same and for certain other individuals who are passed over the road toll free by reason of having granted, or being successors in title to persons who granted to this defendant's predecessor in title rights of way for the construction of said road.

As to paragraph 4: It admits that there are two large clubs on Fort George Island, but it is without knowledge or information sufficient to form a belief as to the truth of the allegation that their membership consists for the most part of people from other States, and denies that any of such members use said toll road in interstate commerce for hire or otherwise. It is without knowledge or information sufficient to form a belief as to the truth of the allegation that there is a large winter colony on Fort George Island, who come from States other than the State of Florida, but says that if such colony exists its members do not use said toll road in interstate commerce for hire or otherwise.

As to paragraph 6: It admits that the United States mail is carried over said road once each way six days out of every week. The mail carrier passes over said road on a right of way pass, and without charge for his or her own passage or for the passage of such mails. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that shipments of freight or other commodities in interstate commerce are carried over said road.

As to paragraph 7: This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph.

As to paragraph 8: This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph.

As to paragraph 9: This defendant admits that Bayshore Water and Light Company is its subsidiary but denies that it renders services in connection with the operation of the toll road.

As to paragraph 10: It denies the allegations of paragraph 10 and further says that it was the sole employer of the employees who operated the telephone line and the toll road prior to April 1, 1942, and that since that time all time spent by any employee upon the operation of the telephone line has been separately recorded and kept and separately paid for at a rate of not less than 30¢ per hour by Bayshore Water and Light Company. The time so paid for by Bayshore Water and Light Company is not deducted from the employee's time nor pay with and from this defendant.

As to paragraph 11: It repeats its answer as to paragraph 10, but says, in addition, that no substantial amount of interstate commerce has at any time been carried on over said toll road or telephone line.

As to paragraph 12: It says that the said telephone line is so used, but says that none of the plaintiffs had any contact with any such telegraph communications nor performed any duties with regard thereto. As to collections of charges for such use of said telephone line it says that said charges were collected by the defendant, The North Shore Corporation, prior to April 1, 1942, and by Bayshore Water and Light Company thereafter, and not by any of the plaintiffs unless, without the knowledge or consent of these defendants, or either of them, the plaintiffs have collected such charges as a matter of courtesy to such persons as have been concerned with the transmission and delivery of such telegraph messages, such transmission and delivery being at no time the concern of either of the defendants hereto.

As to paragraph 13: This defendant says that at no time has any substantial amount of interstate commerce used said toll road. As to said telephone line it repeats its allegations that it operated same prior to April 1, 1942, and says that prior to that date no substantial amount of interstate commerce was carried on over said telephone line and further alleges that the only contact of the plaintiff Knox with the said telephone line prior to that date was as an operator thereof, engaged in making connections and putting calls through, and that the said telephone line has at no time had more than ten stations.

As to paragraph 14: It denies that any of the plaintiffs in his employment was engaged in interstate commerce, for the reason that it says that no substantial portion of the work or services rendered by any of the plaintiffs related to or came in contact with commerce which was interstate in character. It admits the allegations of paragraph 14 to the effect that each of the plaintiffs collected tolls in the operation of the telephone line and toll road, but says that no substantial amount of tolls was collected by any of the plaintiffs on interstate commerce.

It admits the allegations of paragraph 15, but as to the services of the plaintiffs in interstate commerce, it says that same were insubstantial and inconsequential in amount.

As to paragraph 16, it says: The said plaintiff, William J. Scott, entered the employ of this defendant about the 14th day of October, 1942, and his employment ceased about the 25th day of March, 1943, and he was employed during the periods endings on the dates hereinafter set forth for the number of hours during each such period as hereinafter set forth for the total pay during each such period hereinafter set forth:

Period (WE—Week Ending)	Hours	Amount
WE 10/16/42	21	6.37
WE 10/23/42	81	20.00
WE 10/30/42	81	20.00
WE 11 /6/42	81	20.00
WE 11/13/42	81	20.00
WE 11/20/42	81	20.00
WE 11/27/42	81	20.00
WE 12/ 4/42	81	20.00
WE 12/11/42	81	20.00
WE 12/18/42	81	20.00
WE 12/25/42	81	20.00
WE 12/31/42	81	20.00
WE 1/ 8/43	81	20.00
WE 1/15/43	108	26.00
WE 1/22/43	94½	23.00
WE 1/29/43	94½	23.00
WE 2/ 5/43	94½	23.00
WE 2/12/43	94½	23.00
WE 2/19/43	94½	23.00
WE 2/26/43	94½	23.00
WE 3/ 5/43	94½	23.00
WE 3/12/43	81	20.00
WE 3/19/43	94½	23.00
WE 3/25/43	94½	25.00

It denies that said plaintiff is due any additional sum as wages nor any sum as liquidated damages nor any sum as attorney's fees.

As to paragraph 17, it says: The said plaintiff, Rubin (or Ruben) Knox entered the employ of this defendant about the 15th day of March, 1942, and his employment ceased about the 7th day of March, 1943, and he was employed during the periods ending on the dates hereinafter set forth for the number of hours during each such period as herein-

after set forth for the total pay during each such period hereinafter set forth:

Period	Hours	Amount
(SMP—Semi-Monthly Payroll)		
SMP 3/15/42	108	27.96
SMP 3/31/42	144	35.00
SMP 4/15/42	144	35.00
SMP 4/30/42	144	35.00
SMP 5/15/42	144	35.00
SMP 5/31/42	144	35.00
SMP 6/15/42	144	35.00
SMP 6/30/42	144	35.00
SMP 7/15/42	144	35.00
SMP 7/31/42	180	44.00
SMP 8/15/42	168	41.00
SMP 8/31/42	168	41.00
SMP 9/15/42	168	41.00
SMP 9/30/42	168	41.00
SMP 10/15/42	168	41.00
SMP 10/31/42	144	37.50
SMP 11/15/42	144	37.50
SMP 11/30/42	144	37.50
SMP 12/15/42	144	37.50
SMP 12/31/42	144	37.50
SMP 1/15/43	180	46.50
SMP 1/31/43	168	43.50
SMP 2/15/43	168	43.50
SMP 2/28/43	166	43.50
SMP 3/15/43	75	21.75

It denies that said plaintiff is due any additional sum as wages nor any sum as liquidated damages nor any sum as attorney's fees.

As to paragraph 18, it says: The said plaintiff, W. M. Young, entered the employ of this defendant about the 30th

day of September, 1942, and his employment still continues and he was employed during the periods ending on the dates hereinafter set forth for the number of hours during each such period as is hereinafter set forth:

Period (WE—Week Ending) (SMP—Semi-Monthly Payroll)	Hours	Amount
WE 10/ 2/43	72	20.00
SMP 10/15/42	144	40.00
SMP 10/31/42	144	40.00
SMP 11/15/42	144	40.00
SMP 11/30/42	144	40.00
SMP 12/15/42	144	40.00
SMP 12/31/42	144	40.00
SMP 1/15/43	156	43.00
SMP 1/31/43	168	46.00
SMP 2/15/43	168	46.00
SMP 2/28/43	166	46.00
SMP 3/15/43	168	46.00
SMP 3/31/43	192	46.00
WE 4/ 2/43	12	3.60
WE 4/ 9/43	72	26.40
WE 4/16/43	72	26.40
WE 4/23/43	72	26.40
WE 4/30/43	72	26.40
WE 5/ 6/43	72	26.40

It denies that said plaintiff is due any additional sum as wages nor any sum as liquidated damages nor any sum as attorney's fees. For the period commencing with the week ending April 9, 1943, this defendant admits that the said W. M. Young was employed in interstate commerce for the reason that he was thereafter employed as relief man one day each week in the operation of the drawbridge over Sister's Creek, under which a substantial amount of interstate commerce flows and this defendant says that since

said date the employment of the plaintiff Young has been in strict accordance with the Fair Labor Standards Act; that his time has been accurately kept; that his rate of pay has been 30¢ per hour and that for any time beyond forty hours per week put in by him he has been paid at the rate of 45¢ per hour. Except for this latter period this defendant denies that the plaintiff Young was employed in interstate commerce.

As to paragraph 20: This defendant admits the allegations of paragraph 20, but denies that any of the plaintiffs was engaged in interstate commerce except as hereinabove set forth.

SMITH AND AXTELL,
Attorneys for Defendant, The North Shore Corporation,
By W. GREGORY SMITH,
Of Counsel.

Whose address is:
605 Bisbee Building,
Jacksonville, Florida.

Received a copy of the foregoing answer this 4th day of June, A. D. 1943.

JOHN E. LAKE,
Attorney for Plaintiffs.

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16 FINAL JUDGMENT.

District Court of the United States, Southern District of Florida, Jacksonville Division.

William J. Scott, et al, Plaintiffs,

vs. 588-J.

The North Shore Corporation, a Corporation, Defendant.

This cause was tried at Jacksonville, Florida, on June 23-25, 1943, inclusive, before a Judge without a jury; and the Court having duly made and entered its findings of fact and conclusions of law, it is hereby

Ordered and Adjudged as follows:

1. That the plaintiffs in said cause do severally recover of and from the defendant, The North Shore Corporation, the following sums of money:

William J. Scott	5 544.44
Ruben Knox	1160.38
W. M. Young	474.64

2. That in addition to the sums hereinabove mentioned plaintiffs shall recover from the defendant, The North Shore Corporation, attorney's fees as follows: the sum of $210.00.

3. That the costs of this case shall be taxed by the Clerk of the Court against the defendant.

4. For all of which let execution issue.

Done and Ordered at Chambers at Orlando, Florida, this 28th day of September, A. D. 1943.

DOZIER A. DE VANE,
District Judge.

17 NOTICE OF APPEAL.

Filed Oct. 6, 1943.

United States District Court, Southern District of Florida.

Case No. 588 J-Civil.

William J. Scott, et al, Plaintiffs,
vs.
The North Shore Corporation, a Corporation, Defendant.

Notice is hereby given that The North Shore Corporation, the defendant abovenamed, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the Final Judgment entered in this action on the 28th day of September, 1943, whereby each of the plaintiffs named in said judgment recovered sums certain of and from this defendant, this appeal being taken from each and every part of said judgment. The parties appellee hereto are the plaintiffs, William J. Scott, Rubin Knox and W. M. Young.

Dated at Jacksonville, Florida, this 6th day of October, 1943.

SMITH & AXTELL,
Attorneys for Defendant,
By W. GREGORY SMITH,
Of Counsel.

Whose address is:
603 Bisbee Building,
Jacksonville 2, Florida.

18 STIPULATION.

(Title Omitted.)

It Is Hereby Stipulated and Agreed by and between th respective parties hereto as follows:

1. The record on the appeal of the defendant in th above styled cause entered October 6, 1943; shall consi only of the following papers:

(1) The final judgment entered in this cause unde date of September 28, 1943.

(2) The Notice of Appeal entered in this cause Octobe 6, 1943.

(3) This Stipulation.

(4) Defendant's Statement of Points on Which It In tends to Rely on Appeal, entered in this cause October .. 1943.

2. This appeal involves points identical with points 1 t 7, both inclusive, and point 10 in the appeal of the defend ant from the Final Judgment in a companion cause in th above styled Court, namely, H. T. Overstreet, et al, vs. Th North Shore Corporation, No. 393-J-Civil. This cause an said Overstreet cause were consolidated for trial and th evidence in this cause in support of the Judgment herein therefore identical with the evidence in support of th judgment in said Overstreet cause.

3. This appeal should be decided ultimately in precisel the same fashion that the appeal simultaneously taken said Overstreet cause is decided. The parties therefor agree that the decision of the Appellate Court or Courts o

said appeal shall be in conformity with the decision of said Courts on said simultaneous appeal in said Overstreet cause, the style of which, on the appeal simultaneously taken, will be The North Shore Corporation, a Corporation, Appellant, vs. Isadore Barnett, et al, Appellees.

4. To whatever extent shall be necessary, the parties stipulate and agree that the record in said cause of The North Shore Corporation vs. Isadore Barnett, et al, shall be used as the record on the appeal herein taken on October 6, 1943.

Stipulated and Agreed at Jacksonville, Florida, this 18th day of October, 1943.

SMITH & AXTELL,
Attorneys for Defendant,
By W. GREGORY SMITH,
Of Counsel.

Whose address is:
603 Bisbee Building,
Jacksonville, Florida.

JOHN E. LAKE,
Attorney for Plaintiffs.

Whose address is:
105 Law Exchange Building,
Jacksonville, Florida.

DEFENDANT'S STATEMENT OF POINTS ON WHICH IT INTENDS TO RELY ON APPEAL.

20 (Title Omitted.)

In compliance with Rule 75 (d) of the Rules of Federal Procedure for the District Courts of the United States, the defendant, The North Shore Corporation, hereby states that

upon its appeal entered herein October 6th, 1943, it intends to rely upon the following points:

1. Defendant will contend that the Court erred in holding that the complaint and evidence taken thereunder exhibited a claim against this defendant upon which relief could be granted.

2. Defendant will contend that the plaintiffs failed to prove that they, severally, were engaged in commerce during a substantial portion of the several periods of their several employments and therefore, that the Court erred in holding that they, severally, could recover.

3. Defendant will contend that the plaintiffs failed to prove that there was an extensive amount of interstate commerce over the defendant's highway and therefore, that the Court erred in holding that they, severally, could recover.

4. Defendant will contend that the plaintiffs failed to prove that there was a substantial amount of interstate commerce over the defendant's highway and therefore, that the Court erred in holding that they, severally, could recover.

5. Defendant will contend that the Court erred in holding that it was not a defense to this action that at none of the times mentioned in the complaint was there any substantial amount of interstate commerce conducted on or over the toll road owned by the defendant, work on or in connection with which was done by the plaintiff employees herein.

6. Defendant will contend that the Court erred in not holding that the plaintiff who made telephone connections with Southern Bell Telephone & Telegraph Company for

the transmission of telephone and telegraph messages over the line of Bayshore Water & Light Company were, in such work, exempt from the application of the Fair Labor Standards Act under Section 13 (a) (11) thereof.

7. Defendant will contend that the Court erred in holding that it was no defense to this action that at none of the times mentioned in the complaint was there any substantial part of the activities of the plaintiffs or any of them relating to commerce from points outside the State of Florida to points inside the boundaries thereof, or from points inside the boundaries thereof to points outside the State of Florida.

8. Defendant will contend that the Court erred in denying and overruling the plaintiffs' Motion to Strike out from the stipulation between the parties entitled "Stipulation No. 1 as to Facts" all the evidence thereto attached concerning the foreign license traffic over the toll road and in, thereby, ruling that the mere fact that a car bearing a foreign license may have proceeded over the toll road was evidence that interstate commerce was being conducted over the toll road.

SMITH & AXTELL,
Attorneys for Defendant,
By W. GREGORY SMITH,
Of Counsel.

Whose address is:
603 Bisbee Building,
Jacksonville, Florida.

United States of America,
Southern District of Florida, ss.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 6, inclusive, contain a true copy of all such papers and proceedings in the cause of The North Shore Corporation, Appellant, vs. William J. Scott, et al, Appellees, as appear upon the records and files of my office that have been directed to be included in said transcript by the agreement of the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Jacksonville, Florida, on this the 13th day of November, A. D. 1943.

EDWIN R. WILLIAMS,
(Edwin R. Williams)
Clerk, U. S. District Court,
Southern District of Florida.

(Seal)

[fol. 23] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

JOINT MOTION TO CONSOLIDATE CASE WITH NO. 10881 FOR ARGUMENT, BRIEFING AND DECISION—Filed January 4th, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

THE NORTH SHORE CORPORATION, Appellant,

vs.

WILLIAM J. SCOTT, et al., Appellees

STIPULATION

It is hereby stipulated and agreed by and between the respective parties hereto, through their undersigned counsel, as follows:

1. This case involves points which are identical with points which are also involved in the case of The North Shore Corporation vs. Isadore Barnett, et al., No. 10881. The two cases were consolidated for trial in the court below.

2. This appeal should be decided ultimately in precisely the same fashion that the case entitled The North Shore Corporation vs. Isadore Barnett, et al., No. 10881 is decided and the parties agree that, so far as is necessary, the record in the Barnett case shall be used as the record on the appeal herein involved.

[fol. 24] 3. The parties further agree that this cause shall be submitted to the court for determination upon the briefs filed and the oral argument had in said cause entitled The North Shore Corporation vs. Isadore Barnett, et al., No. 10,881.

Stipulated and agreed at Jacksonville, Florida this 28th day of December, 1943.

(Signed) W. Gregory Smith, Attorney for Appellant. (Signed) John E. Lake, Attorney for Appellees.

Approved: (Signed) Saml. H. Sibley, U. S. Circuit Judge.

New Orleans, La., Jan. 10, 1944.

[fol. 25] ARGUMENT AND SUBMISSION

Extract from the Minutes of May 5th, 1944

No. 10882

NORTH SHORE CORPORATION

versus

WILLIAM J. SCOTT, et al.

On this day this cause was called, and, after argument by W. Gregory Smith, Esq., for appellant, was submitted to the Court.

[fol. 26] OPINION OF THE COURT, DISSENT OF SIBLEY, CIRCUIT JUDGE—Filed June 9th, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10882

NORTH SHORE CORPORATION, Appellant,

versus

WILLIAM J. SCOTT, et al., Appellees

Appeal from the District Court of the United States for the Southern District of Florida

(June 9, 1944)

Before Sibley, McCord, and Lee, Circuit Judges

LEE, Circuit Judge:

This case presents the same issues upon the same facts as the case of *North Shore Corporation, Appellant, v. Isadore Barnett, et al., Appellees,* this day decided.

[fol. 27] Upon the authority of *North Shore Corporation v. Isadore Barnett, et al.,* the judgment of the Court below is

Affirmed.

Sibley, Circuit Judge, Dissenting.

[fol. 28] JUDGMENT

Extract from the Minutes of June 9th, 1944

No. 10882

NORTH SHORE CORPORATION

versus

WILLIAM J. SCOTT, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, North Shore Corporation, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Sibley, Circuit Judge, dissents."

fols. 29-34] PETITION FOR REHEARING—Filed June 30, 1944

In the United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT

No. 10882

THE NORTH SHORE CORPORATION,

Appellant,

vs.

WILLIAM J. SCOTT, *et al.*,

Appellees.

PETITION OF APPELLANT FOR REHEARING

Appellant, by its attorneys undersigned, respectfully petitions the court to grant a rehearing of this case upon the following several grounds:

I

The court's ultimate conclusion is reflected in the holding:

"The toll road and the telephone line are links in national transportation and communication systems. They are open and available at all times for interstate use. If the application of the Fair Labor Standards Act to employees engaged in maintaining the one and maintaining and operating the other depends on the extent of the use of each in interstate commerce, then such use would make coverage often depend on adventitious and remote factors, at times even the weather. If

coverage depends on the amount and character
traffic handled, which may fluctuate or alter from we
to week, then employees engaged in maintaining t
toll road and in maintaining and operating the te
phone line may be under the Act one week and n
under the Act the next. Such construction would to
certain degree render the Act nugatory."

This holding destroys the standard of the single workwe
established by the Fair Labor Standards Act and, in fa
establishes that an employee is subject to the terms of t
Act and entitled to its benefits whenever, within the meani
of the Act, he is "engaged in" interstate commerce duri
some period of time, not established by the opinion, and n
subject to be ascertained from the terms of the Act its

II

The opinion, in holding that the employees herein a
covered by the Act under the facts and circumstances
tablished by the record in this cause, overlooks and igno
the fact that the only obigation of the employer is, in
given workweek, to pay his employees "engaged in co
merce" in accordance with the terms and provisions
Sections 6 and 7 of the Act.

III

The decision in this case constitutes judicial legislati
in that it adds to the only legislatively fixed fields of cov
age, namely: (1) "Engaged in Commerce" and (2) "E
gaged in Production of goods for Commerce"; a third fie
(3) "Engaged in the operation of an instrumentality
Commerce", in which the employee is to be deemed cover
by the Act for long and undefined periods of time wh
from the standpoint of interstate commerce, the inst
mentality is not used at all.

IV

The decision in this case, in establishing by judicial legislation coverage of the Act wherever there is engagement in the operation of an instrumentality of commerce, opens a fertile field for litigation as to just what an instrumentality may be, ignoring and overlooking the fact that the Act is not made applicable to the operation of an instrumentality of commerce and that it does not define an "instrumentality". The opinion holds that a toll road is an instrumentality, although infrequently and not substantially used in interstate commerce. The opinion holds that a telephone line is an instrumentality. The decisions of this Court, in holding that there is no coverage of office building employees, indicate that an office building is not an instrumentality, although no one would take the position that an office building is not erected for the sole purpose of accommodating the transaction of commerce generally, and that, in any large city, inevitably offices in every office building will transact a large amount of interstate commerce. The judicial legislation enacted is, therefore, bad legislation in that it gives absolutely no guage by which the bar or the public can define the legislative term "instrumentality".

V

The opinion misconstrues the position of appellant, regarding the telephone line mentioned in the record, and treats the case as though the contention were made that, because the telephone line had fewer than 500 stations, its operators were excluded from the coverage of the Act, notwithstanding they may have otherwise been engaged in interstate commerce. This was not and is not the appellant's position. Appellant merely contended that since the telephone operators, as such, were not covered by the Act, their coverage depended on other engagement in commerce;

that their only other engagement in commerce was in the operation of the toll road; and that, therefore, whether they were engaged in commerce depended solely upon whether being a toll collector on the particular toll road involved constituted engagement in commerce. The opinion, therefore, indicates that Court overlooked and ignored the true position of appellant, so far as the telephone line was concerned.

VI

The opinion in this cause wholly overlooks and ignores the problems of statutory construction involved. Of necessity, if the decision is to be supported as other than judicial legislation, it must be supported as holding that the appellees were engaged in interstate commerce. Yet, the language of the Court in *Johnson vs. Dallas Downtown Development Company*, 132 F. (2d) 287, to-wit:

> "Clearly Congress intended the coverage of the Act to stop somewhere and the line bounding coverage must be drawn somewhere";

is overlooked and ignored and coverage of the Act is extended beyond any boundaries ever heretofore outlined and beyond what could possibly have been intended by the Congress, bearing in mind that Congress did not exercise in the Act the full scope of the commerce power and, in enacting the statute, plainly indicated its purpose to leave local business to the protection of the states, as was specifically held in *Kirschbaum Co. vs. Walling*, 316 U.S. 517, 522, and *Walling vs. Jacksonville Paper Company*, 317 U.S. 564, 570. There is a complete failure to meet or consider the facts in evidence which demonstrate how purely local is the operation of this dead end country toll road.

VII

The opinion in this case wholly overlooks and ignores the fact that the decisions cited in support of the main holding were under an act regulating actual navigation on navigable waters of the United States and under the National Labor Relations Act, respectively, and that this Court's decisions in *Johnson vs. Dallas Downtown Development Company*, supra, and *Johnson vs. Masonic Building Co.*, 138 F. (2d) 817, are much more nearly in point, both in fact and in law.

VIII

The Fair Labor Standards Act, as construed by this Court in its opinion of June 9th, 1944, as applied to the facts of this case, constitutes an unwarranted and unconstitional exercise of power under the commerce clause by the Congress, in that the Fair Labor Standards Act is herein construed as applicable to the conduct of a business, both by employer and employee, purely local in nature, not in or of itself constituting interstate commerce, nor affecting such commerce.

IX

The Fair Labor Standards Act, as construed by this Court in its opinion of June 9th, 1944, as applied to the facts of this case, constitutes the exercise of power by the Congress under the commerce clause in the realm of activities reserved to the states under the Constitution, in that it extends coverage of the Act to "work of the employees (which) has only the most tenuous relation to" commerce and only most tenuously affects commerce. *Kirschbaum Co. vs. Walling*, 316 U.S. 517, 525.

WHEREFORE, it is respectfully urged that this petiti
for a rehearing be granted, and that, upon further c
sideration, the judgment of the District Court be revers

Respectfully submitted,

W. Gregory Smith,
Attorney for Appellant

CERTIFICATE OF COUNSEL

I, W. Gregory Smith, attorney for appellant in the abo
entitled case, do hereby certify that the foregoing petiti
for rehearing is presented in good faith and not for del

W. Gregory Smith,

Copy of the foregoing Petition received:

John E. Lake
Attorney for Appellees

[fol. 35] ORDER DENYING REHEARING

Extract from the Minutes of July 11th, 1944

No. 10882

NORTH SHORE CORPORATION

versus

WILLIAM J. SCOTT, et al.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge, Dissents."

[fol. 36] MOTION AND ORDER STAYING MANDATE—Filed July 19, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10882

THE NORTH SHORE CORPORATION, Appellant,

vs.

WILLIAM J. SCOTT, et al., Appellees

MOTION FOR STAY OF MANDATE

The Appellant, The North Shore Corporation, a corporation, by its attorney undersigned, moves the court to stay its mandate, due to issue herein July 21st, 1944, for a period of 60 days from said date, in order to afford appellant time and opportunity to apply to the Supreme Court of the United States for a Writ of Certiorari to review the decision of this court heretofore rendered in this cause, and for a stay thereafter until the Petition for Writ of Certiorari shall have been acted upon by said Supreme Court, and in support of this motion appellant shows unto the court that it intends to file with the Supreme Court of the United States its Petition for Certiorari to be directed to said judgment and that it has authorized its counsel to pro-

ceed with such petition. Appellant further shows that supersedeas bond was made below and that appellees are amply protected.

(Signed) W. Gregory Smith, Attorney for Appellant.

Received a copy of the foregoing Motion and accept service of same this 14th day of July, A. D. 1944.

(Signed) John E. Lake, Attorney for Appellees.

[fol. 37] STATE OF FLORIDA,
County of Duval, ss:

Before me, the undersigned authority, personally appeared W. Gregory Smith, to me well known, who being by me first duly sworn, deposes and says: that he is the attorney for the appellant in the above styled cause; that he has read the above and foregoing Motion for Stay of Mandate and knows the contents thereof, and that the facts therein stated are true.

(Signed) W. Gregory Smith.

Sworn to and subscribed before me this 14th day of July, A. D. 1944. (Signed) Mona Hogan, Notary Public, State of Florida at Large. My commission expires: Oct. 15, 1946. (Seal.)

[fol. 38] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10882

NORTH SHORE CORPORATION, Appellant,

versus

WILLIAM J. SCOTT, et al., Appellees

On Consideration of the Application of the Appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the

date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at Shreveport, La., this 18 day of July, 1944.

(Signed) Elmo P. Lee, United States Circuit Judge.

[fol. 39] Clerk's certificate to foregoing transcript omitted in printing.